



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SW

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-------------------------|---------------------|------------------|
| 09/721,881 | 11/27/2000 | Michel L.P.M. Verhoeven | P-4566 | 4027 |

28390 7590 04/23/2004
MEDTRONIC VASCULAR, INC.
IP LEGAL DEPARTMENT
3576 UNOCAL PLACE
SANTA ROSA, CA 95403

EXAMINER

JACKSON, SUZETTE JAMIE

ART UNIT PAPER NUMBER

3738

SL

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/721,881

Applicant(s)

VERHOEVEN, MICHEL L.P.M.

Examiner

Jackson J Suzette

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3738

DETAILED ACTION

1. Applicant's amendment dated 2/16/04 has been received in application serial number 09/721,881. Claims 3, 8-11, 13-15 have been canceled and claims 12, and 16-21 have been withdrawn from further consideration.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, and 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitourne et al. 6,10,483 in view of Elton 5,106,790. Whitourne et al. discloses the invention as claimed comprising: A radially expandable stent comprising a wire having a substantially uniform hydrogel coating layer thereon; wherein the layer has an average dry coating thickness of about 0.01 micrometers to about 25 micrometers; and wherein the layer has a biologically active agent, a biocompatible, hydrophilic surface. See col. 1, lines 45-47; col 2, lines 6-9, 25-31, 34-35, 40, 53-67; col. 6, lines 28-58; col 7, lines 15-17 and col. 8, lines 19-21 however Whitourne et al. does not specify that *the thickness of the coating has a standard deviation of no greater than 10 percent*. Elton teaches a hydrogel coating that can be applied to a stent in a

Art Unit: 3738

uniform continuous thickness (col. 4, lines 10-14). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the coating of Whitourne et al. and apply a uniform thickness (*with no greater than 10 percent standard deviation*) because Whitourne et al. discloses that the coatings of the invention may be thin on the order of 1-100 microns and preferably less than about 50 microns (see col. 7, lines 15-17) and that the coating is a continuous thin layer (see col. 4, line 18) as well as the dipping techniques as taught by Beavers et al. to produce a uniform thickness coating along the stent.

Response to Arguments

4. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. It is obvious that since the combination of Whitbourne et al. and Beavers et al would produce a coating thickness that is "uniform" that it would not deviate beyond about 10 percent because if it did it would lead to an uneven surface coating.

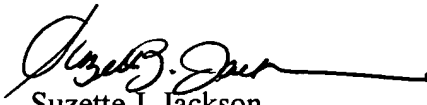
Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 703-308-6516.

Art Unit: 3738

6. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

7. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Suzette J. Jackson
20 April 2004